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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/810,320

03/27/2004

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8013

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06/13/2007

EXAMINER

WEIER, ANTHONY J

ART UNIT

PAPER NUMBER

1761

MAIL DATE

DELIVERY MODE

06/13/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/810,320

Applicant(s)

STOCK ET AL.

Examiner

Anthony Weier

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1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) 11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12 and 13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group I in the reply filed on 3/15/07 is acknowledged. The traversal is on the grounds that claims 12 and 13 are composition claims and should be included with the claims of Group I. Applicant is correct. Claims 12 and 13 are composition claims and have been examined with the other claims of Group I.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-10, 12, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hisatomi.

Hisatomi discloses an egg substitute comprising water, vegetable oil (e.g. soybean oil), gum (e.g. xanthan) and an acidifying agent (e.g. vinegar) wherein same is prepared for use in starch or flour containing foods (e.g. cake).

Hisatomi is silent regarding the particular amounts of each ingredient to be used as set forth in the instant claims. However, such determination would have been well within the purview of one skilled in the art at the time of the invention, and it would have

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been obvious to one having ordinary skill in the art at the time of the invention to have arrived at such amounts through routine experimental optimization.

Claim 8 further calls for the specific use of canola oil with xanthan gum.

Although Hisatomi is silent regarding the use of canola oil, Hisatomi does disclose the use of salad oil which frequently contains canola oil. Moreover, canola oil itself is certainly a notoriously well known vegetable oil. Absent a showing of unexpected results, it would have been further obvious to have employed said canola oil as the oil in the egg substitute as a matter of preference depending on the oil which is available or the cost considerations.

4. Claims 1-10, 12, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lynn.

Lynn (cols. 3-5 and Examples) discloses an egg substitute comprising water, vegetable oil (e.g. cottonseed oil), gum (e.g. guar) and an acidifying agent (e.g. citric acid, vinegar) wherein same is prepared for use in starch or flour containing foods (e.g. cake).

Lynn is silent regarding the particular amounts of each ingredient to be used as set forth in the instant claims. However, such determination would have been well within the purview of one skilled in the art at the time of the invention, and it would have been obvious to one having ordinary skill in the art at the time of the invention to have arrived at such amounts through routine experimental optimization.

Claim 8 further calls for the specific use of canola oil with xanthan gum.

Although Lynn is silent regarding the use of canola oil and xanthan gum, Lynn does

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disclose the use of vegetable oils and gums in general. Xanthan gum and canola oil are notoriously well known gum and oil, respectively, and, absent a showing of unexpected results, it would have been further obvious to have employed said canola oil as the oil and xanthan gum as the gum in the egg substitute as a matter of preference depending on the oil which is available or the cost considerations.

Prior Art

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Thursday.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Anthony Weier
Primary Examiner
Art Unit 1761

Anthony Weier
June 11, 2007


6/11/07